

United States  
Circuit Court of Appeals  
For the Ninth Circuit. 17

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GUISEPPE MAITA,

Appellant,

VS.

EDW. L. HAFF, as District Director of Immigration  
and Naturalization for the Port of San Francisco, California,  
Appellee.

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Transcript of Record

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Upon Appeal from the District Court of the United  
States for the Northern District of California,  
Southern Division.

FILED

AUG - 8 1940

PAUL P. O'BRIEN,



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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GUISEPPE MAITA,

Appellant,

vs.

JOHN J. McGRATH, Commissioner of Immigration  
for the Port of San Francisco, California,  
Appellee.

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Transcript of Record

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Upon Appeal from the District Court of the United  
States for the Northern District of California,  
Southern Division.



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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California.

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In the Southern Division of the United States  
District Court for the Northern District of  
California.

N. 22925S

In the Matter of

GUISEPPE MAITA

on Habeas Corpus,

File No. 12020/28365

PETITION FOR WRIT OF HABEAS CORPUS

To the Honorable United States District Judge now  
Presiding in the United States District Court  
for the Northern District of California, South-  
ern Division.

The petition of Guiseppe Maita respectfully  
shows:



## I.

Guisepppe Maita hereinafter referred to as "the detained" is a native of Italy and a subject of the King of Italy.

## II.

The detained arrived in the United States from Italy in April, 1906, and he has resided in the United States continuously ever since said arrival with the exception of a brief trip to Mexico hereinafter referred to.

## III.

At the time of the detained's arrival in the United States [1\*] in April, 1906, he was examined by the United States immigration authorities for the Port of New York and as a result of said examination he was permitted by such immigration authorities to enter the United States for the purpose of permanent residence therein.

## VI.

On October 19, 1937, a warrant for arrest of alien was issued by the Secretary of Labor charging the detained as follows:

"that he has been sentenced, subsequent to May 1, 1917, to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude committed within five years after entry, to-wit: defrauding the United States of the tax on the spirits distilled by him."

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\*Page numbering appearing at foot of page of original certified Transcript of Record.



A true copy of said warrant is annexed hereto, marked "Exhibit A" and made a part hereof. At the time said warrant was issued the detained was an incarcerated prisoner in the United States Penitentiary at McNeil's Island, Steilacoom, in the State of Washington. A purported hearing was accorded the detained while he was an incarcerated prisoner as aforesaid and said hearing took place in said penitentiary while the detained was there an incarcerated prisoner. The detained was then and there incarcerated in said penitentiary as a result of conviction on November 24, 1936, upon an indictment returned in the July 1936 Term of this court charging the detained and others as follows:

"That on the said day at the said place [on the 17th day of July, 1936, at a place known as the Paul Labarile Ranch located near Concord, County of Contra Costa, within said Division and District] the said defendants wilfully engaged in the business of a distiller of alcohol with intent to defraud the United States of the tax on the spirits distilled by them [26 USCA 1184]."

## V.

As a result of said hearing, it was found by the Secretary of Labor that the charge contained in the aforesaid warrant of arrest was sustained. A true copy of said finding is annexed [2] hereto, marked "Exhibit B" and made a part hereof. Whereupon the Secretary of Labor under date of

February 8, 1938 issued a warrant for the detained's deportation to Italy, a true copy of which warrant of deportation is annexed hereto, marked "Exhibit C" and made a part hereof.

#### VI.

The detained is now in the custody of John J. McGrath, Commissioner of Immigration for the Port of San Francisco, State and Northern District of California, Southern Division thereof, who acting under the orders of the Secretary of Labor is ready and about to deport him to Italy on a vessel or railroad which leaves San Francisco, California, on February 6, 1939.

#### VII.

Your petitioner alleges that the Secretary of Labor in issuing a warrant for the detained's deportation and the said John J. McGrath in holding the detained in custody so that his deportation may be effected are acting in excess of the power committed to them and each of them, in each of the following particulars, to-wit:

1. The crime of which detained was convicted as aforesaid is not a crime involving moral turpitude within the meaning of Section 19 of the Immigration Act of February 5, 1917:

2. There is no evidence to support the finding that the crime for which the detained was convicted and imprisoned was committed within five years after entry, in this: There is no evidence in the record showing exactly when the detained made a

visit to Mexico beyond a vague and uncertain admission by the detained that he was in Tia Juana “about four years ago”—“I think so, it was three or four months before the country went wet—it was in the summer”; [3]

3. The detained was not accorded a fair hearing by reason of the following facts: That the hearing was held while he was an incarcerated prisoner in a Federal penitentiary; that he was not represented by counsel; that there was no interpreter present; that he was interrogated entirely in the English language which he imperfectly understands and speaks evry poorly; that in view of his ignorance and illiteracy it was impossible for him to have understood the nature of the hearing, the questions that were put to him or to appreciate that he was entitled to counsel and the production of witnesses on his own behalf; that in view of his ignorance and illiteracy it was impossible for him to have given the answers which the record before the Department purports to indicate that he did give, and that the record upon which the Secretary of Labor has ordered the detained to be deported is not and cannot be a true and correct report of said alleged hearing.

Wherefore, your petitioner prays that a writ of habeas corpus issue directed to said Commissioner commanding and directing him to hold the body of said Guiseppe Maita within the jurisdiction of this court and to present his body before this court at

a time and place to be specified in said writ, together with the time and cause of his detention, so that the same may be fully inquired into to the end that he may be restored to liberty and go hence without day.

Dated at San Francisco, California, February 6, 1939.

CHAUNCEY TRAMUTOLO

Attorney for Petitioner. [4]

State of California,  
City and County of San Francisco—ss.

Guiseppe Maita, being first duly sworn, deposes and says:

I am the petitioner named in the foregoing petition. The same has been read and explained to me and I know the contents thereof and it is true of my own knowledge except as to those matters which are therein stated on information and belief and as to those matters I believe it to be true.

GUISEPPE MAITA

Subscribed and sworn to before me this 6th day of February, 1939.

[Seal]

J. G. ROBERTS

Notary Public in and for the City and County of  
San Francisco, State of California. [5]



EXHIBIT A

WARRANT FOR ARREST OF ALIEN

United States of America, Department of Labor,  
Washington

389/11

No. 55962/802

To District Director of Immigration and Naturalization, Seattle, Wash., Or to any Immigrant Inspector in the Service of the United States.

Whereas, from evidence submitted to me, it appears that the alien Guiseppe or Joe Maita who entered this country at San Ysidro, Calif. during the year 1933, has been found in the United States in violation of the immigration laws thereof, and is subject to be taken into custody and deported pursuant to the following provisions of law, and for the following reasons, to-wit: The act of 1917, in that he has been sentenced, subsequent to May 1, 1917, to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude committed within five years after entry, to wit: Defrauding the United States of the tax on the spirits distilled by him.

I, by virtue of the power and authority vested in me by the laws of the United States, hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with

law. The expenses of detention, hereunder, if necessary, are authorized payable from the appropriation "Salaries and Expenses, Immigration and Naturalization Service, 1938." Pending further proceedings, the alien should be permitted to remain in his present location without expense to the Immigration Service. However, if released to the custody of this Service at any time before deportation is effected or before other final disposition is made of his case, he may be released under bond in the sum of \$1000.

For so doing this shall be your sufficient warrant.

Witness my hand and seal this 19th day of October, 1937.

TURNER W. BATTLE,

Assistant to the Secretary of  
Labor. [6]

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## EXHIBIT B

### SUMMARY—FINDINGS—

### RECOMMENDATIONS

Guisepppe or Joe Maita, the person made the subject of these proceedings is an alien, native and subject of Italy of full Italian race, 50 years of age, laborer by occupation. He appears to be of good physique, and at least of average intelligence. He is a married man, and claims to be the father of five American born children. His family all re-

side in Oakland and San Francisco, California. He claims to have no surviving relatives in Italy. He alleges that his father and mother resided in the United States for some years, and are both deceased, and were buried at Oakland, that neither of his parents ever secured citizenship in the United States. The alien alleges he did not secure final papers because he could not read or write. He claims to have no money on hand or in any bank, and does not own any property.

Alien alleges original entry to the United States at New York City April 1906, ex. SS. "Mauritania", which entry could not be verified. His last entry to the United States was at San Ysidro, California in the year 1933 on returning following a brief visit in Mexico, and at which time he did not pay headtax or surrender an unexpired immigration visa.

On November 24, 1936 he entered a plea of guilty in United States District Court San Francisco, California, to an indictment charging him with violation of Title 26, USCA 1184 (defrauding the United States of tax on spirits distilled) and was sentenced to imprisonment in a U. S. Penitentiary to be designated by the Attorney General of the United States for a period of 18 months, and a fine in the sum of \$100.00. In Exhibit "C" the subject admits previous sentence in the San Francisco County jail of one year for selling liquor, also previous sentence of 1 month in the San Francisco



County Jail, for bootlegging, and that he has been arrested about six times altogether. All arrests were for bootlegging.

He is subject to deportation for the following reasons, to-wit:

(1) Under the Immigration Act of 1917, in that he has been sentenced subsequent to May 1, 1917, to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude committed within five years after entry, to wit: Defrauding the United States of the tax on the spirits distilled by him.

Deportation is recommended.

WILLIAM G. McNAMARA

Immigrant Inspector

WGM.D

11-6, 1937

1320/2175 [7]

EXHIBIT C.

WARRANT—DEPORTATION OF ALIEN

United States of America

Department of Labor

Washington

No. 389/11

55962/802

To: District Director of Immigration and Naturalization, Seattle, Wash., District Director of Immigration and Naturalization, Ellis Island, N. Y. H. Or to any Officer or Employee of the United States Immigration and Naturalization Service.

Whereas, from proofs submitted to me, Assistant to the Secretary, after due hearing before an authorized immigrant inspector, I have become satisfied that the alien Guiseppe or Joe Maita, who entered the United States at San Ysidro, Calif., during the year 1933, is subject to deportation under section 19 of the Immigration Act of February 5, 1917, being subject thereto under the following provisions of the laws of the United States, to wit: The act of 1917, in that he has been sentenced, subsequent to May 1, 1917, to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude committed within five years after entry, to wit: Defrauding the United States of the tax on the spirits distilled by him.

I, the undersigned officer of the United States, by virtue of the power and authority vested in me by and under the laws of the United States, do hereby command you to deport the said alien to Italy, at the expense of the appropriation "Salaries and Expenses, Immigration and Naturalization Service, 1938", including the expenses of an attendant, if necessary.

For so doing this shall be your sufficient warrant.

Witness my hand and seal this 8th day of February, 1938.

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Assistant to the Secretary of  
Labor.

[Endorsed]: Filed Feb. 6, 1939. [8]

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[Title of District Court and Cause.]

### ORDER TO SHOW CAUSE

Good cause appearing therefor, and upon reading the verified petition herein:

It is hereby ordered, that John J. McGrath, Commissioner of Immigration for the Port of San Francisco, appear before this Court on the 20th day of February 1939, at the hour of ten o'clock A. M. of said day, to show cause, if any he has, why a writ of habeas corpus should not be issued as prayed for, and that a copy of this order be served upon said Commissioner; and,

It is further ordered, that Guisepppe Maita, the petitioner herein, be not removed from the jurisdiction of this Court and [9] that he be released on furnishing bond in the sum of One Thousand Dollars (\$1,000) pending this hearing and until further orders herein.

Dated this 6th day of February, 1939.

A. F. ST. SURE

United States District Judge.

[Endorsed]: Filed Feb. 6, 1939. [10]

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[Title of Court and Cause.]

**RETURN TO ORDER TO SHOW CAUSE**

Comes now John J. McGrath, as District Commissioner of Immigration and Naturalization for the Port of San Francisco, California, through Arthur J. Phelan as Inspector in Charge, Legal Division of the United States Immigration and Naturalization Service at said port regularly assigned hereunto by said District Commissioner of Immigration and Naturalization, and for cause why a writ of habeas corpus should not issue herein, shows as follows:

**I.**

That the person in whose behalf the petition for writ of habeas corpus was filed, is detained by the respondent John J. McGrath, as District Commissioner of Immigration and Naturalization for the

port of San Francisco, California, under and by virtue of a warrant of deportation duly and regularly issued by the Secretary of Labor of the United States after a hearing duly and regularly held before an Immigrant Inspector of the United States.

## II.

That a true copy of said warrant of deportation and the record of the entire proceedings pertaining thereto are annexed hereto and made a part hereof as Respondent's Exhibit "A".

Wherefore, Respondent prays that the petition for writ of habeas corpus herein be denied.

ARTHUR J. PHELAN

Inspector in Charge, Legal  
Division as aforesaid, here-  
unto authorized for and on  
behalf of Respondent John  
J. McGrath, District Com-  
missioner of Immigration  
and Naturalization.

[Endorsed]: Filed May 20, 1939. [11]

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[Title of District Court and Cause.]

### SUPPLEMENTAL RETURN TO ORDER TO SHOW CAUSE

Comes now John J. McGrath, as District Commissioner of Immigration and Naturalization for



the Port of San Francisco, California, through Arthur J. Phelan as Inspector in Charge, Legal Division of the United States Immigration and Naturalization Service at said port, regularly assigned hereunto by said District Commissioner of Immigration and Naturalization, and supplementing the Return to Order to Show Cause heretofore filed herein, shows as follows:

I.

That subsequent to the entry of the order of this Court of April 22, 1939, and in conformity with said order, a further hearing was accorded the petitioner by the immigration authorities of the United States and at said hearing petitioner was given opportunity to present further evidence bearing upon the date of his last entry into the United States. [12]

II.

That upon the completion of such further administrative hearing the record thereof was submitted to the Secretary of Labor for final decision.

III.

That after a consideration of the record of the entire proceedings the Secretary of Labor ordered that no change be made in the previous decision ordering that petitioner be deported.

IV.

That the original record of the entire deportation proceedings, including the record of all hearings

held subsequent to this Court's order of April 22, 1939 and the decisions of the Secretary of Labor thereon, is annexed hereto and made a part hereof as Respondent's Exhibit "A".

Wherefore, respondent prays that the petition for writ of habeas corpus be denied.

ARTHUR J. PHELAN

Inspector in Charge, Legal  
Division as aforesaid, here-  
unto authorized for and on  
behalf of Respondent John  
J. McGrath, District Com-  
missioner of Immigration  
and Naturalization.

[Endorsed]: Filed Apr. 22, 1940. [13]

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In the Southern Division of the United States Dis-  
trict Court for the Northern District of Cali-  
fornia.

No. 22925-S

In the Matter of

GUISEPPE MAITA,

On Habeas Corpus.

#### MEMORANDUM AND ORDER

While confined in the United States Penitentiary at McNeil Island, petitioner, after hearing, was, on October 21, 1937, ordered deported under the Act



of 1917 for the reason "that he has been sentenced, subsequent to May 1, 1917, to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude committed within five years after entry, to-wit: Defrauding the United States of the tax on the spirits distilled by him." Petition for writ of habeas corpus was filed on February 6, 1939. Order to show cause was issued, and return made. After hearing the matter was briefed and submitted. The court was impressed with the argument made on behalf of petitioner, and on April 22, 1939, made an order remanding the case to the Immigration Authorities for further hearing. The case was reopened and further testimony [14] taken. On April 22, 1940, a supplementary return was filed.

The vital question, which has twice been decided against petitioner by the Secretary of Labor, is the date of petitioner's last entry into the United States. According to his own admissions he visited Mexico and re-entered the United States in the summer of 1933, which brings him within the provisions of the deportation statute. 8 USCA 155.

Though an alien, petitioner has been in the United States for about thirty-four years, is married, and has five children. The case has sentimental appeal, but the court is without discretion and must follow the mandate of the law. "The correctness of the judgment is not to be determined by enquiring whether the conclusion drawn by the Sec-

retary of Labor from the evidence was correct or by deciding whether the evidence was such that, if introduced in a court of law, it would be held legally sufficient to prove the fact found. The denial of a fair hearing is not established by proving merely that the decision was wrong. *Chin Yow v. United States*, 208 U. S. 8, 13." *Tisi v. Tod*, 264 U. S. 131, 133. There is nothing in the record showing that the hearing was unfair or that there was an abuse of discretion. It is therefore

Ordered that the petition for writ of habeas corpus be, and the same is hereby denied. Petitioner is hereby remanded to the custody of the Immigration Authorities for deportation.

Dated: May 9, 1940.

A. F. ST. SURE

United States District Judge.

[Endorsed]: Filed May 9, 1940. [15]

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[Title of District Court and Cause.]

NOTICE OF APPEAL TO THE UNITED  
STATES CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT, UNDER  
RULE 73B

Notice is hereby given that Guiseppe Maita, petitioner above-named, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the final judgment denying his petition

for a writ of habeas corpus entered in this action on May 9, 1940.

Dated: June 18, 1940.

Signed: CHAUNCEY TRAMUTOLO  
Attorney for Petitioner

Address: 706 Alexander Building  
San Francisco, Calif.

(Admission of Service)

[Endorsed]: Filed Jun. 18, 1940. [16]

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[Title of District Court and Cause.]

STIPULATION FOR DESIGNATION OF CON-  
TENTS OF RECORD ON APPEAL,  
UNDER RULE 75

Petitioner and appellant, Guiseppe Maita, designates the portions of the record, proceedings and evidence to be contained in the record on appeal herein, as follows:

1. Petition for writ of habeas corpus;
2. Order to show cause;
3. Return to order to show cause;
4. Supplemental return to order to show cause;
5. Order denying petition for writ;
6. Notice of appeal;
7. Order transmitting original exhibits;
8. This designation.

Dated: June 11, 1940.

Signed: CHAUNCEY TRAMUTOLO

Attorney for petitioner and  
appellant.

Address: 706 Alexander Building  
San Francisco, Calif.

So stipulated.

FRANK J. HENNESSY

United States Attorney

By LOUIS R. MERCADO

Assistant United States  
Attorney

[Endorsed]: Filed Jun. 18, 1940. [17]

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[Title of District Court and Cause.]

ORDER TRANSMITTING ORIGINAL  
EXHIBITS

It appearing to the Court that the Immigration records pertaining to the arrest of Guiseppe Maita, the appellant and petitioner herein, were introduced in evidence before and considered by the United States District Court in reaching its determination herein, and it appearing that said records are a necessary and proper exhibit for the determination of said case upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit, it is therefore



Ordered, upon motion of Chauncey Tromutolo, attorney for appellant and petitioner herein, that said Immigration records may be withdrawn from the office of the Clerk of this Court and [18] filed by him in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, said withdrawal to be made at the time the record on appeal is certified to by the Clerk of this Court.

Dated San Francisco, June 18, 1940.

A. F. ST. SURE

United States District Judge.

[Endorsed]: Filed July 3, 1940. [19]

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District Court of the United States, Northern  
District of California

CERTIFICATE OF CLERK TO TRANSCRIPT  
OF RECORD ON APPEAL

I, Walter B. Maling, Clerk of the United States District Court, for the Northern District of California, do hereby certify that the foregoing 19 pages, numbered from 1 to 19, inclusive, contain a full, true, and correct transcript of the records and proceedings in the matter of Guisepppe Maita, on Habeas Corpus No. 22925-S, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of \$2.90 and that the said amount

has been paid to me by the Attorney for the appellant herein.

In witness whereof, I have hereunto set my hand and affixed the seal of said District Court, this 3rd day of July A. D. 1940.

[Seal]

WALTER B. MALING

Clerk.

J. P. WELSH

Deputy Clerk. [20]

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[Endorsed]: No. 9568. United States Circuit Court of Appeals for the Ninth Circuit. Guiseppe Maita, Appellant, vs. John J. McGrath, Commissioner of Immigration for the Port of San Francisco, California, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed July 9, 1940.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

United States Circuit Court of Appeals for the  
Ninth Circuit

No. 9568

GUISEPPE MAITA,

Appellant,

vs.

JOHN J. McGRATH, Commissioner of Immigra-  
tion for the Port of San Francisco,

Appellee.

STATEMENT OF POINTS AND DESIGNA-  
TION PURSUANT TO RULE 19, SUBDI-  
VISION 6.

### DESIGNATION

Appellant designates the entire record as neces-  
sary for consideration of the points hereinafter  
stated.

### STATEMENT OF POINTS

Appellant was not accorded a fair hearing by the  
Secretary of Labor and the order of deportation  
is not supported by evidence.

CHAUNCEY TRAMUTOLO

Attorney for Appellant.

Receipt of a copy of the foregoing Statement of  
Points and Designation Pursuant to Rule 19, Sub-



division 6, is hereby acknowledged this 18 day of July, 1940.

FRANK J. HENNESSY

United States Attorney

K

By .....

Assistant United States

Attorney.

[Endorsed]: Filed July 18, 1940. Paul P. O'Brien, Clerk.